

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

STATE OF NORTH DAKOTA  
EX REL. WAYNE STENEHJEM,  
ATTORNEY GENERAL,

Petitioner,

-v-

THE TALBOTS, INC.,

Respondent.

Civil No. 08C2476

**ORDER OF APPROVAL**

CPAT 080166.001

Pursuant to the authority of this Court provided in N.D.C.C. § 51-15-06.1,

IT IS HEREBY ORDERED that the attached Assurance of Voluntary Compliance  
is approved as an assurance of discontinuance as specified in N.D.C.C. § 51-15-06.1.

The Clerk of Court shall receive and file this Assurance of Voluntary Compliance.

Dated this 3<sup>rd</sup> day of October, 2008.

BY THE COURT:

/s/ Bruce Romanick  
Judge of the District Court

G:\CPAT\NoDak\Talbots\OoA.doc

RECEIVED & FILED  
OCT 03 2008  
Clk. of Crt. Burleigh Co.

084765

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

STATE OF NORTH DAKOTA  
EX REL. WAYNE STENEHJEM,  
ATTORNEY GENERAL,

Petitioner,

-vs-

THE TALBOTS, INC.,

Respondent.

Civil No. 08 C 2476

**ASSURANCE OF  
VOLUNTARY COMPLIANCE**

CPAT 080166.001 v.4

To each person or entity identified below, hereinafter "Respondent":

The Talbots, Inc.  
1 Talbot's Drive  
Hingham, MA 02043

and

c/o David W. Bertoni, Esq.  
Brann & Isaacson  
184 Main Street  
Lewiston, ME 04243-3070

WHEREAS Wayne Stenehjem, Attorney General of the State of North Dakota (hereinafter "the Attorney General"), acts in the public interest pursuant to North Dakota Century Code ("N.D.C.C.") ch. 51-28 (commonly referred to as the "Do Not Call Law");

and

WHEREAS the Attorney General has determined that in the public interest an investigation should be conducted into the activities of Respondent to ascertain whether violations of ch. 51-28 have occurred; and

RECEIVED & FILED

OCT 02 2008

Clk of Crt. Burleigh Co.

WHEREAS N.D.C.C. ch. 51-28, specifically N.D.C.C. § 51-28-02, prohibits certain calls using automatic dialing-announcing devices ("prerecorded messages" or "robo-calls") to telephone subscribers in North Dakota; and

WHEREAS the Attorney General has received consumer complaints and/or other information alleging Respondent engaged in prerecorded message calls, contrary to North Dakota law; and

WHEREAS as a result of this investigation the Attorney General alleges, among other things, Respondent has violated N.D.C.C. § 51-28-02; and

WHEREAS Respondent denies that it has in any way violated North Dakota law, including but not limited to N.D.C.C. § 51-28-02 and any other statute referred to herein; and

WHEREAS the parties desire to settle this matter without litigation and without an admission of a violation;

NOW THEREFORE it is hereby agreed:

1. This Assurance of Voluntary Compliance shall constitute the statutory assurance of discontinuance as provided in N.D.C.C. § 51-15-06.1. Respondent acknowledges *in personam* jurisdiction in North Dakota. Nothing in this Assurance of Voluntary Compliance is intended to waive any rights or private remedies available to consumers. See also N.D.C.C. § 51-15-09. Nothing in this Assurance of Voluntary Compliance is, or may be represented as, an approval or endorsement of Respondent or its business practices, nor a grant of any affirmative right to Respondent.

2. Respondent, including its directors, officers, employees, servants, and those acting under their direction or control in the conduct of Respondent's business,

voluntarily agrees to be and is permanently enjoined from making telephone calls in violation of N.D.C.C. ch. 51-28.

3. North Dakota Century Code § 51-28-02 says:

**Use of prerecorded or synthesized voice messages.** A caller may not use or connect to a telephone line an automatic dialing-announcing device unless the subscriber has knowingly requested, consented to, permitted, or authorized receipt of the message or the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. This section and section 51-28-05 do not apply to a message from a public safety agency notifying a person of an emergency; a message from a school district to a student, a parent, or an employee; a message to a subscriber with whom the caller has a current business relationship; or a message advising an employee of a work schedule.

4. Respondent hereby acknowledges that a past retail purchase from Respondent, or a party acting on Respondent's behalf, does not establish a "current business relationship" under N.D.C.C. § 51-28-02.

5. If Respondent, or a party acting on Respondent's behalf, wishes to obtain a North Dakota subscriber's telephone number from the subscriber for purposes of using an automatic dialing-announcing device to connect to the subscriber's telephone line, Respondent must establish that the subscriber has knowingly requested, consented to, permitted or authorized receipt of such a message, or that the message is otherwise permitted under N.D.C.C. § 51-28-02. By way of example, not of limitation, if Respondent, or a party acting on Respondent's behalf, receives a subscriber's telephone number in the subscriber's response to the question: "Would you like to receive a prerecorded [and/or synthesized] voice message at your home phone number to keep you informed of our sales and promotions?" it would be evidence that the subscriber has knowingly requested, consented to, permitted or authorized receipt of such a message.

Respondent acknowledges that in the event of an allegation of a violation of N.D.C.C. § 51-28-02, Respondent will have the burden of production and proof in the event it wishes to establish that a particular subscriber has knowingly requested, consented to, permitted or authorized receipt of a message by means of an automatic dialing-announcing device. The mere fact that Respondent, or a party acting on Respondent's behalf, might have a policy or procedure which calls for a subscriber to be asked the question: "Would you like to receive a prerecorded [and/or synthesized] voice message at your home phone number to keep you informed of our sales and promotions?" is not, in and of itself, proof that any particular subscriber was, in fact, asked that question and provided the telephone number in response to that question.

6. Respondent agrees it will comply with this Assurance of Voluntary Compliance and further acknowledges and agrees any violations of this Assurance of Voluntary Compliance shall be punishable as contempt of court pursuant to N.D.C.C. ch. 27-10 and Respondent further may be subject to all other civil penalties and sanctions provided by law, including attorney fees and costs.

If Respondent is adjudged in contempt of court for violations of this Assurance of Voluntary Compliance, adjudged in violation of this Assurance of Voluntary Compliance or adjudged in violation of N.D.C.C. ch. 51-28, said Respondent shall also be responsible for payment to the Attorney General for reasonable investigation costs, expenses and attorney fees to the extent that such recovery is provided for by law and entitlement to such is established by the Attorney General.

7. Upon execution of this Assurance of Voluntary Compliance by Respondent, Respondent shall make a payment to the Attorney General in the sum of

**\$1,000** in lieu of civil penalties, investigation costs and attorney fees, which payment shall not constitute any admission of liability or of any violations of law. Payment shall be a check or money order made payable to **Office of Attorney General – North Dakota**, and delivered to:

Consumer Protection  
& Antitrust Division  
Office of Attorney General  
4205 State Street  
Bismarck, ND 58503-0623  
Attn: JPThomas

Any payment not timely received is deemed delinquent and a material violation of this Assurance of Voluntary Compliance.

8. Respondent represents the signer below is competent and fully authorized to act on behalf of Respondent. Respondent acknowledges it has been provided the opportunity to review with an attorney this Assurance of Voluntary Compliance, understand the implications and obligations imposed by it and has knowingly, freely and willingly entered into this Assurance of Voluntary Compliance rather than contest the matter in court. Respondent further acknowledges and agrees this Assurance of Voluntary Compliance may be approved by and filed with the District Court without any further notice or hearing. Signatures transmitted electronically or via facsimile by Respondent shall be deemed the equivalent of original signatures; this document may be executed in counterparts, with each counterpart deemed an original.

**THE TALBOTS, INC.**

(including all "doing business as" names, formal corporate names, fictitious names of any kind or any variations of the same)

By: Mara D. Calame

Mara D. Calame  
(print name)

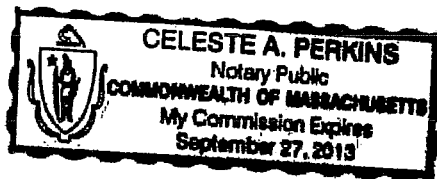
Its: VP + Senior Corporate Counsel  
(title)

COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF Norfolk ) ss  
)

Subscribed and sworn to before me this

26<sup>th</sup> day of September, 2008.

Celeste A. Perkins  
Notary Public




This Assurance of Voluntary Compliance is hereby received and accepted.

Dated this 30th day of September, 2008.

**STATE OF NORTH DAKOTA**

Wayne Stenehjem  
Attorney General

By:



James Patrick Thomas

ID No. 06014

Assistant Attorney General

Consumer Protection and

Antitrust Division

Office of Attorney General

4205 State Street

PO Box 1054

Bismarck, ND 58502-1054

(701) 328-5570

Attorneys for Petitioner